

AMENDED IN ASSEMBLY AUGUST 28, 2015

AMENDED IN ASSEMBLY JULY 8, 2015

AMENDED IN ASSEMBLY JUNE 19, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 7, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 763

Introduced by Senator Leno

February 27, 2015

An act to add Sections 19095 and 19161.4 to the Business and Professions Code, relating to home furnishings.

LEGISLATIVE COUNSEL'S DIGEST

SB 763, as amended, Leno. Juvenile products: flame retardant chemicals.

Existing federal law requires the Consumer Product Safety Commission to institute proceedings for the determination of an appropriate flammability standard if the commission finds that such a standard, including labeling, for a mattress, a fabric, related material, or product, may be needed to protect the public. Existing federal law authorizes a state to establish a flammability standard if, among other things, it provides a higher degree of protection from the risk of fire.

Existing state law, the Home Furnishings and Thermal Insulation Act, provides for the licensure and regulation of upholstered furniture manufacturers by the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation. Existing state law requires every

upholstered-furniture manufacturer to hold a furniture and bedding manufacturer's license. Existing state law also requires every upholstered-furniture retailer to hold a retail furniture dealer's license. A violation of the act is a crime.

Existing state law requires upholstered furniture and bedding to contain a specified label that is securely fastened in a manner approved by the bureau in an area open to visible view. Existing state law establishes a standard to produce upholstered furniture which is safer from the hazards associated with smoldering ignition. The standard provides methods for smolder resistance of cover fabrics, barrier materials, resilient filling materials, and decking materials for use in upholstered furniture.

This bill would require a manufacturer of juvenile products, as defined, ~~sold in California to indicate whether or not the product contains~~ *that sells juvenile products that contain* added flame retardant chemicals, as defined, ~~by including in California, to include~~ a specified statement on a label, that meets certain labeling requirements, ~~securely attached to the product.~~ *requirements.*

The bill would require the manufacturer of the juvenile product to retain sufficient documentation to show whether flame retardant chemicals were added to a juvenile product or component. The bill would provide that a written statement by the supplier of each component attesting that flame retardant chemicals were added or not added is sufficient to make this showing. The bill would require the bureau to assess a fine for a violation of the documentation requirement or for failure to provide, upon request, the required documentation to the bureau, as specified.

The bill would require a manufacturer of a juvenile product sold in California, upon request, to provide to the bureau, within 30 days of the request, documentation establishing the accuracy of the flame retardant chemical statement on the label. The bill would require the bureau to provide the Department of Toxic Substances Control with samples of the juvenile product or components thereof sold in California from products ~~marked "contains NO added flame retardant chemicals"~~ *that are not labeled as containing added flame retardant chemicals* for testing for the presence of added flame retardant chemicals, as specified. If the department's testing shows that a juvenile product ~~labeled as "contains NO added flame retardant chemicals"~~ *that is not labeled as containing added flame retardant chemicals* is mislabeled because it contains added flame retardant chemicals, the bill would authorize the

bureau to assess fines for violations against manufacturers of the juvenile product and component manufacturers, as specified.

The bill would require the bureau to make information about any ~~citation~~ *determination* issued pursuant to its provisions available to the public on its Internet Web site. The bill would also make it the duty of the bureau to receive consumer complaints.

The bill would authorize the bureau to adopt regulations to carry out these provisions. The bill would provide that these provisions would apply to juvenile products manufactured on and after July 1, 2016, for retail sale in the state.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The Home Furnishings and Thermal Insulation Act requires that all mattresses and mattress sets manufactured for sale in this state, and all seating furniture sold or offered for sale for use in this state, be fire retardant, as defined. Existing law requires that all bedding products, other than mattresses and mattress sets, that the bureau determines to contribute to mattress bedding fires comply with specified regulations adopted by the bureau.

Existing law authorizes the chief of the bureau, subject to specified approval, to exempt items of upholstered furniture that are not deemed to be a serious fire hazard from these fire retardant requirements. Existing regulation exempts from these fire retardant requirements specified articles of upholstered furniture that include bassinets, booster seats, and car seats that are not used for, or in, facilities designed for the care or treatment of humans.

This bill would exempt from the aforementioned fire retardant requirements under the act specified articles of juvenile products, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 19095 is added to the Business and Professions Code, to read:

19095. (a) For the purposes of this section, the following definitions shall apply:

(1) “Component” means the separate constituent parts of juvenile products sold in California, specifically cover fabrics, barrier materials, resilient filling materials, and plastic parts.

(2) “Juvenile product” means a product subject to the Home Furnishings and Thermal Insulation Act and intended for use by infants and children under 12 years of age, such as a bassinet, booster seat, infant car seat, changing pad, floor play mat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant swing, infant walker, nursing pad, nursing pillow, playpen side pad, playard, portable hook-on chair, stroller, children’s nap mat, and infant foam crib mattress. Products subject to the requirements of Section 19094 are not subject to the requirements of this section. “Juvenile product” does not include products required to meet federal flammability standards contained in Part 1632 or 1633 of Title 16 of the Code of Federal Regulations.

(3) “Added flame retardant chemicals” means flame retardant chemicals that are present in any juvenile product or component thereof at levels above 1,000 parts per million.

(4) “Flame retardant chemical” means any chemical or chemical compound for which a functional use is to resist or inhibit the spread of fire. Flame retardant chemicals include, but are not limited to, halogenated, phosphorous-based, nitrogen-based, and nanoscale flame retardants, flame retardant chemicals listed as “designated chemicals” pursuant to Section 105440 of the Health and Safety Code, and any chemical or chemical compound for which “flame retardant” appears on the substance Safety Data Sheet (SDS) pursuant to Section 1910.1200(g) of Title 29 of the Code of Federal Regulations.

(5) “Chemical” means either of the following:

(A) An organic or inorganic substance of a particular molecular identity, including any combination of those substances occurring, in whole or in part, as a result of a chemical reaction or occurring in nature, and any element, ion, or uncombined radical, and any

1 degrade, metabolite, or reaction product of a substance with a
2 particular molecular identity.

3 (B) A chemical ingredient, which means a substance comprising
4 one or more substances described in subparagraph (A).

5 (6) “Molecular identity” means the substance’s properties listed
6 below:

7 (A) Agglomeration state.

8 (B) Bulk density.

9 (C) Chemical composition, including surface coating.

10 (D) Crystal structure.

11 (E) Dispersibility.

12 (F) Molecular structure.

13 (G) Particle density.

14 (H) Particle size, size distribution, and surface area.

15 (I) Physical form and shape, at room temperature and pressure.

16 (J) Physicochemical properties.

17 (K) Porosity.

18 (L) Solubility in water and biologically relevant fluids.

19 (M) Surface charge.

20 (N) Surface reactivity.

21 (7) “Department” means the Department of Toxic Substances
22 Control.

23 (8) “Consumer Price Index” means the Consumer Price Index
24 for All Urban Consumers published by the Bureau of Labor
25 Statistics.

26 (b) (1) A manufacturer of juvenile products sold in California
27 shall ~~have a label securely attached to the product, include, for~~
28 *juvenile products containing added flame retardant chemicals, a*
29 *label* in plain view, stating the following:
30

31 “The State of California has determined that this product does
32 not pose a serious fire hazard. The state has identified many flame
33 retardant chemicals as being known to, or strongly suspected of,
34 adversely impacting human health or development.

35 The fabric, filling, and plastic parts of this ~~product:~~ *product*
36 *contain added flame retardant chemicals.”*

37 ~~_____contains added flame retardant chemicals~~

38 ~~_____contains NO added flame retardant chemicals”~~

1 ~~(2) A manufacturer of juvenile products sold in California shall~~
2 ~~indicate the absence or presence of added flame retardant chemicals~~
3 ~~by placing an “X” in one of the appropriate blanks.~~

4 ~~(3)~~

5 (2) The label for juvenile products shall comply with the labeling
6 requirements of subdivisions (a), (b), and (e) of Section 1126 of
7 Title 4 of the California Code of Regulations. The type on the label
8 need not be in all capital letters.

9 (c) (1) The manufacturer of the juvenile product sold in
10 California shall retain documentation to show whether flame
11 retardant chemicals were added. A written statement by the supplier
12 of each component of a juvenile product attesting either that flame
13 retardant chemicals were added or not added shall be sufficient
14 documentation.

15 (2) The bureau shall ensure compliance with the labeling and
16 documentation requirements in this section.

17 (3) (A) Upon request, a manufacturer of a juvenile product sold
18 in California shall provide to the bureau, within 30 days of the
19 request, documentation establishing the accuracy of the flame
20 retardant chemical statement on the label required by subdivision
21 ~~(b): (b) or documentation that the juvenile product does not contain~~
22 ~~an added flame retardant.~~

23 (B) The bureau shall assess fines of not less than two thousand
24 five hundred dollars (\$2,500) but not more than fifteen thousand
25 dollars (\$15,000) in accordance with the factors described in
26 subdivision (d) for the failure of the manufacturer of the juvenile
27 product to maintain the documentation required by this section,
28 or for the failure of the manufacturer of the juvenile product to
29 provide, upon request, the documentation required by this section
30 to the bureau. These fines shall replace any other fines in this article
31 for a violation of the documentation requirements of this section.
32 This subparagraph does not alter or amend any other penalty
33 otherwise imposed by this article.

34 (C) A manufacturer of juvenile products sold in California and
35 component suppliers shall be jointly and severally liable for
36 violations of the documentation required in this section.

37 (D) (i) The bureau shall provide the Department of Toxic
38 Substances Control with a selection of samples from juvenile
39 products ~~marked “contains NO added flame retardant chemicals”~~
40 ~~that are not labeled as containing added flame retardant chemicals~~

for testing for the presence of added flame retardant chemicals. The samples shall be from the components identified in paragraph (1) of subdivision (a). The bureau shall select samples based on consultation with the department, taking into account a range of manufacturers and types of juvenile products. The bureau and the department shall consult on the tests to be conducted by the department. The department shall provide the results of any completed test to the bureau. The bureau shall reimburse the department for the cost of testing for the presence of added flame retardant chemicals in juvenile products ~~marked “contains NO added flame retardant chemicals.”~~ *that are not labeled as containing added flame retardant chemicals.*

(ii) No later than August 1 of each fiscal year, the bureau shall assess available resources and determine the number of tests to be conducted in the corresponding fiscal year, pursuant to this subparagraph.

(E) (i) If the department’s testing shows that a juvenile product ~~not labeled as “contains NO added flame retardant chemicals”~~ *containing added flame retardant chemicals* is mislabeled because it contains added flame retardant chemicals, the bureau may assess fines for violations against manufacturers of the juvenile product and component manufacturers to be held jointly and severally liable for the violation.

(ii) A fine for a violation of this subparagraph relating to mislabeling shall be assessed in accordance with the factors described in subdivision (d) and the following schedule:

(I) The fine for the first violation shall be not less than one thousand dollars (\$1,000) but not more than two thousand five hundred dollars (\$2,500).

(II) The fine for the second violation shall be not less than two thousand five hundred dollars (\$2,500) but not more than five thousand dollars (\$5,000).

(III) The fine for the third violation shall be not less than five thousand dollars (\$5,000) but not more than seven thousand five hundred dollars (\$7,500).

(IV) The fine for any subsequent violation shall be not less than seven thousand five hundred dollars (\$7,500) but not more than ten thousand dollars (\$10,000).

(iii) The fines in clause (ii) shall replace any other fines in this article for a violation of the testing requirements of this section.

1 This clause does not alter or amend any other penalty otherwise
2 imposed by this article.

3 (iv) If the department's testing shows that a juvenile product
4 *that is not* labeled as ~~“contains NO added flame retardant~~
5 ~~chemicals”~~ *containing added flame retardant chemicals* is
6 mislabeled because it contains added flame retardant chemicals,
7 in addition to a fine or any other request, the bureau may request
8 that the label required by subdivision (b) for juvenile products that
9 belong to the same stock keeping unit (SKU) currently produced
10 by the manufacturer be corrected to reflect that flame retardant
11 chemicals are added to the juvenile product.

12 (v) If the department's testing shows that a juvenile product
13 *that is not* labeled as ~~“contains NO added flame retardant~~
14 ~~chemicals”~~ *containing added flame retardant chemicals* is
15 mislabeled because it contains added flame retardant chemicals,
16 in addition to a fine or any other request, the bureau may request
17 additional testing of more products belonging to the same stock
18 keeping unit (SKU) at the manufacturer's expense to verify the
19 accuracy of the label required by subdivision (b) for juvenile
20 products if the manufacturer wishes to retain the “contains NO
21 added flame retardant chemicals” designation on the label required
22 by subdivision (b).

23 (d) (1) The bureau shall make information about any ~~citation~~
24 *determination* issued pursuant to this section available to the public
25 on its Internet Web site.

26 (2) In determining the amount of the fine for violations of this
27 section, the bureau shall consider the following factors:

- 28 (A) The nature and severity of the violation.
- 29 (B) The good or bad faith of the cited person.
- 30 (C) The history of previous violations.
- 31 (D) Evidence that the violation was willful.
- 32 (E) The extent to which the cited person or entity has cooperated
33 with the bureau.

34 (3) (A) The bureau shall adjust all minimum and maximum
35 fines imposed by this section for inflation every five years.

36 (B) The adjustment shall be equivalent to the percentage, if any,
37 that the Consumer Price Index at the time of adjustment exceeds
38 the Consumer Price Index at the time this section goes into effect.
39 Any increase determined under this paragraph shall be rounded as
40 follows:

1 (i) In multiples of ten dollars (\$10) in the case of penalties less
2 than or equal to one hundred dollars (\$100).

3 (ii) In multiples of one hundred dollars (\$100) in the case of
4 penalties greater than one hundred dollars (\$100) but less than or
5 equal to one thousand dollars (\$1,000).

6 (iii) In multiples of one thousand dollars (\$1,000) in the case
7 of penalties greater than one thousand dollars (\$1,000).

8 (4) It shall be the duty of the bureau to receive complaints from
9 consumers concerning juvenile products sold in California.

10 (e) The bureau may adopt regulations pursuant to the
11 Administrative Procedure Act (Chapter 3.5 (commencing with
12 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
13 Code) to carry out this section.

14 (f) Electric and electronic units or components, including, but
15 not limited to, power cords or power supply units, motor
16 assemblies, Bluetooth modules, vibration units, light and sound
17 units, circuit boards and wiring, are excluded when determining
18 whether a product contains added flame retardants for purposes
19 of the labeling requirements of this section. The chief may, at his
20 or her discretion, subject to the approval of the director, clarify
21 this list in regulation.

22 (g) This section shall apply to juvenile products manufactured
23 on and after July 1, 2016, for retail sale in the state.

24 SEC. 2. Section 19161.4 is added to the Business and
25 Professions Code, to read:

26 19161.4. The requirements of Section 19161 shall not apply
27 to juvenile products, as defined in Section 19095.

28 SEC. 3. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.